

**Purolator Courier Corp. and Highway and Local Motor Freight Employees, Local 667, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 26-RC-6444**

December 7, 1982

# DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING, ZIMMERMAN, AND  
HUNTER

On August 24, 1981, the Petitioner filed a petition under Section 9(c) of the National Labor Relations Act, as amended. On August 31, following an investigation, the Regional Director for Region 26 dismissed the petition on the grounds that (1) the Petitioner, which admits nonguards to membership, sought to include in the unit the Employer's courier-guards, who, the Regional Director concluded, were guards within the meaning of Section 9(b)(3) of the Act, and (2) the petitioned-for unit was inappropriate as it failed to include the Employer's entire south-central administrative region. Thereafter, the Petitioner filed with the Board a request for review of the Regional Director's dismissal of the petition, contending that his determinations with respect to unit scope and the status of the courier-guards were erroneous.

On January 29, 1982, having duly considered the matter, the Board issued its Ruling on Administrative Action, in which it concluded that reinstatement of the petition and a hearing on the two issues raised by the Petitioner's request for review were warranted. Accordingly, the petition was reinstated and the case was remanded to the Regional Director for appropriate action.

On February 17 and 18, 1982, a hearing was held before Hearing Officer W. Paul Tuberville. Following the close of the hearing and pursuant to Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, the Regional Director transferred this proceeding to the Board for decision. Thereafter, the Employer filed a brief with the Board.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The parties stipulated, and we find, that the Employer is a corporation with an office and place of business located in Memphis, Tennessee, and that it is engaged in the business of providing secured transportation of bank instruments and other

items of value on a time-sensitive basis. The parties further stipulated that, during the 12 months prior to the date of the hearing, a representative period, the Employer provided services valued in excess of \$50,000 directly to points outside the State of Tennessee, and received goods and services valued in excess of \$50,000 from points directly outside the State of Tennessee. Accordingly, we find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The parties stipulated, and we find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and that it claims to represent certain employees of the Employer.

3. The Employer argues that the petition for a unit of drivers (hereinafter courier-guards), sorters, and laborers at its Memphis, Tennessee, location<sup>1</sup> should be dismissed on two separate grounds. First, it contends that the petition fails to raise a question concerning representation because the courier-guards in question are employed as guards within the meaning of Section 9(b)(3) of the Act, and Section 9(b)(3) prohibits the Board from certifying, as a bargaining representative for guards, any union which, like the Petitioner, admits to membership employees other than guards. Second, it contends that the unit sought by the Petitioner, inasmuch as it does not encompass the entire administrative region, is too narrow, and thus inappropriate for collective-bargaining purposes. The only appropriate unit, the Employer maintains, is one which is coextensive with its south-central region.

The Petitioner concedes that it admits nonguard employees to membership, but disputes the Employer's position regarding the courier-guards' status as statutory guards. The Petitioner further contends, contrary to the Employer, that the degree of integration in the Employer's operation is insufficient to establish the appropriateness of a regionwide unit, particularly in view of the substantial lack of integration among the employees dispatched from separate terminals.

<sup>1</sup> At the hearing, the Petitioner amended the petition to delete from its bargaining unit request the Employer's Little Rock, Arkansas, area operational office.

The Employer notes that it does not employ employees in the classifications designated in the petition, but, rather, that the employees referred to as drivers carry the classification of "courier-guard." It states that all courier-guards do their own sorting of commodities for delivery, and that no one is employed in the now-defunct "sorter" classification. It further states that it has no "laborers." The Employer indicates, however, that it does employ two mechanics at the Memphis location, who, it contends, are cross-trained and, in addition to their regular duties, spend a substantial amount of time performing courier-guard work. The Employer contends that these employees are guards within the meaning of Sec. 9(b)(3) of the Act. In view of our disposition of the instant petition, we find it unnecessary to pass upon this issue.

The Employer operates a nationwide delivery system designed to provide the secure, timely transportation of a wide variety of valuable commodities ranging from cash letters and data processing materials to controlled drugs and radioactive pharmaceuticals. Its national operation is divided into 20 administrative subdivisions, or regions, of which the south-central region is one.<sup>2</sup>

The headquarters for the south-central region is located in Memphis, Tennessee, but at a location separate from the Memphis area terminal office at which the approximately 35 Memphis-based courier-guards in question report for work. There are, in addition to the Memphis terminal, six other operational offices and numerous satellite facilities located throughout the region at which various numbers of courier-guards are stationed. A significant number of courier-guards, rather than being assigned to a specific operational or satellite office, work out of their homes. In all, the Employer utilizes about 500 courier-guards to cover its south-central region.<sup>3</sup> They pick up commodities from customers and deliver them on a time-sensitive basis, through an interconnecting route system and a network of "meet" or relay points, to their destinations.<sup>4</sup>

In *Purolator Courier Corp.*, 254 NLRB 599 (1981), the Board examined the nature of the work performed by the Employer's courier-guards who were employed in its Texas-Oklahoma region, and concluded, relying on *MDS Courier Service, Inc.*, 248 NLRB 1320 (1980), and *Brink's Incorporated*, 226 NLRB 1182 (1976), that these employees were guards within the meaning of Section 9(b)(3) of the Act. In its request for review of the Regional Director's decision finding the courier-guards in the instant case to be statutory guards, the Petitioner attempted to distinguish *Purolator* by alleging, *inter alia*, that the trucks dispatched from the Memphis terminal do not transport parcels of value like those described in *Purolator*, and that the courier-guards in the instant case, unlike those in *Purolator*, "are not issued keys nor do they have access to purchase customer's [sic] bank vaults, and private property during non-working hours." The record reveals the Petitioner's factual allegations in this regard to be patently false. They were contradicted not only by the Employer's witness, but by its own witness as well. There is no material difference between the duties performed, the commodities car-

ried, or the type of customers serviced by the Employer's courier-guards in either the south-central or the Texas-Oklahoma region. Thus, the Board's findings in *Purolator* are equally applicable here:

All of the courier/guards are bonded and must pass a security clearance before being hired. They do not carry firearms. They wear uniforms, supplied by the Employer, consisting of shirt, trousers, jacket, cap or hat, with an identifying company logo. The Employer issues the uniforms to make its employees readily identifiable to clients and local law enforcement agencies. The courier/guards make deliveries in vans owned by the Employer, which are clearly identified as "Purolator Courier" delivery vehicles. For a substantial number of the Employer's clients,<sup>5</sup> the courier/guards make pickups and deliveries during nonworking hours, and have access to clients' locked security vaults by entry into the clients' locked premises. For each delivery run which requires entry into customers' locked premises, the dispatcher furnishes the courier/guard on that run with all the keys needed for entry into the customers' premises, for disengaging any alarm systems, and for entering the customers' security vaults. The keys are distributed at the beginning of the shift, and the courier/guard returns the set of keys after he has completed his rounds. The courier/guards are held accountable for the safekeeping of packages in their vehicles, as well as for taking precautions when entering or leaving customers' premises during non-working hours.<sup>6</sup>

<sup>5</sup> DeWitt Evans, the Employer's regional vice president for the Texas-Oklahoma region, testified without contradiction that over 100 of its Houston customers have locked security vaults for which courier/guards are issued keys.

At the time of the hearing in the earlier *Purolator* case, DeWitt Evans<sup>6</sup> was the regional vice president in charge of the Texas-Oklahoma and south-central regions. He is currently in charge of only the south-central region. He testified in *Purolator*, as well as in the instant case, regarding the courier-guard position. He indicated on the record in this case that the positions in both regions, and throughout the country for that matter, are identical. Specifically, Evans testified that 90 percent of all routes in the south-central region require the use of keys to open vaults, and that the same percentage of regional employees regularly open secu-

<sup>2</sup> The south-central region consists of all of the Employer's operation in the States of Arkansas, Mississippi, Louisiana, Tennessee, and a small portion of Missouri.

<sup>3</sup> Fourteen mechanics also work in the region, two of them in Memphis.

<sup>4</sup> Cash letters from a customer bank, for example, must be received at the Federal Reserve Bank in Memphis no later than 12:01 a.m., or else the customer loses use of the "float," or the interest on deposits in transit.

<sup>5</sup> 254 NLRB at 599-600.

<sup>6</sup> The spelling of Evans' first name is as it appears in the record in this case.

city vaults as part of their job duties.<sup>7</sup> Normally, they do so twice a day. According to Evans, virtually every courier-guard in the region performs this security-related job duty at one time or another because routes and employees assigned to them change frequently.

Evans further testified that approximately 900 customers in the region entrust the keys to their premises to the Company so that its courier-guards can come and go during nonbusiness hours, and that 95 percent of the Company's employees utilize these keys on a daily basis. Finally, he testified that, because courier-guards need to have access to customers' locked premises, the Company provides them with extensive security training. It also maintains felonious assault insurance for each of them. Courier-guard Danny Foshee, who testified on the Petitioner's behalf, essentially corroborated Evans' testimony. He admitted, *inter alia*, that his duties regularly require that he open security vaults and use keys to enter customers' premises during non-business hours, and that he has also deactivated a customer's alarm system with a key provided by the Company when it was necessary for him to do so.

Inasmuch as the record evidence establishes that the Employer's courier-guards are employed to protect the valuable property of the Employer's customers, we conclude that the courier-guards herein are guards within the meaning of Section 9(b)(3) of the Act.<sup>8</sup> Accordingly, as the Petitioner admits employees other than guards to membership, it may not be certified as the representative of the Employer's courier-guards, and we will dismiss the petition for this reason.

In addition, we agree with the Employer that the petitioned-for unit would be inappropriate in any case. The unit sought by the Petitioner includes only those employees who work out of the Employer's Memphis terminal. The Employer disputes the appropriateness of a single-facility unit on the basis of *American Courier Corporation*, 184 NLRB 602 (1970),<sup>9</sup> arguing that the only appropriate unit would include all of its operations regionwide.

In *American Courier*, the Board considered facts virtually identical to those present here, and concluded that the courier-guards throughout the Employer's New England region shared such a close community of interest that only a unit coextensive with that region would be appropriate. In rejecting

the petitioner's contention that a unit limited in scope to certain employees at the Employer's Boston, Massachusetts, terminal was an appropriate unit, the Board emphasized the high degree of integration in the Employer's operations, the frequent contacts among courier-guards at relay points in the Employer's transportation system, and the common policies and overlapping supervision under which the courier-guards performed their duties. The record evidence in the instant case makes it abundantly clear that the factors which the Board considered to be controlling in the New England region in *American Courier* also exist in the Employer's south-central region.

As was the case in *American Courier*, control for all operational and personnel matters for the administrative region in the instant case is centered in a regional office. Here, the regional office is located in Memphis, Tennessee. As already noted, DeeWit Evans, regional vice president, is in charge of the south-central region. Working with him is a regional transportation manager, a regional equipment manager, and a regional sales manager. Local supervision is provided throughout the region by terminal managers at the seven area operational locations and by courier supervisors or dispatchers at the satellite locations, all of whom are subject to the direct control of the regional office.

In order to meet the demands of its customers for time-sensitive delivery, the Employer maintains in the south-central region, as it does in all its administrative regions, a system of interconnecting routes. No route can be established or changed without the express approval of the regional office, and these routes are reviewed and changed by that office on a daily basis to maximize efficiency. These routes are tied together by "meet points," where courier-guards operating within the region meet to exchange either specific commodities or the vehicles themselves.<sup>10</sup> The locations of the meet points are also set by the regional office, and may occur at a terminal or even a designated exit off a highway. Some meets involve a substantial number of employees, others only two. According to Evans, approximately 50 percent of the region's courier-guards are involved with transfer work at meet points at any given time but, because routes frequently are reassigned, all courier-guards engage in a significant amount of such work during their tenure with the Company.

<sup>7</sup> The security vaults in question are supplied by the Employer. They are located either inside or outside the client's premises, depending on the circumstances pertaining to the individual client.

<sup>8</sup> *Purolator Courier Corp.*, *supra*; *MDS Courier Service, Inc.*, *supra*; *Brink's Incorporated*, *supra*.

<sup>9</sup> Prior to 1973, the Employer was called American Courier. The name change to Purolator Courier did not reflect any change in the Company's corporate or administrative structure.

<sup>10</sup> In delivering outbound cash letters from the Memphis Federal Reserve Bank, for example, courier-guards stationed at the Employer's locations in the tristate area of Tennessee, Mississippi, and Arkansas rendezvous at from 30 to 40 meet points between 6 and 11 a.m. to effectuate timely delivery to member banks.

In addition to routes involving meet points, the Employer also utilizes what it calls "layover" routes.<sup>11</sup> Courier-guards assigned to these routes leave their base terminals, make pickups at customer locations on their routes, and proceed to other facilities in the south-central region where they stay overnight. Accordingly, the Employer maintains a number of layover facilities in terminals throughout the south-central region, each consisting of a bunkroom and a lounge. Approximately 25 percent of the courier-guards in the region utilize them.<sup>12</sup>

The record also shows, contrary to the Petitioner's contentions, that there is significant overlapping supervision in the Employer's south-central region, just as there is in its New England region.<sup>13</sup> The very nature of the Employer's operations, i.e., employees constantly moving from terminal to terminal, actually demands that this be the case. Thus, while at a terminal other than his home terminal, the courier-guard is subject to the supervision of the local supervisor, who may assign work or impose discipline. In many instances, particularly in the case of courier-guards who are assigned to layover routes, employees receive a greater degree of supervision from supervisors at other terminals than they do from the supervisors at their base terminals.

Further, it is undisputed that the regional office maintains strict control over virtually all aspects of operations and labor relations throughout the south-central region in order to coordinate the Company's delivery system and to maintain uniformity of service. Thus, regional office personnel, as previously noted, maintain careful control over routes, making or approving changes whenever necessary. They spend a substantial amount of time visiting the regional facilities where they review routes and monitor compliance with all of the Company's policies and procedures. In addition to the route system, the number of hours worked by employees in the region is another operational

component which the regional office monitors and controls on a regular basis. Each week, the regional facilities file an hours report with the regional office. If, after reviewing a report, it is determined that the hours either exceed or fail to meet the "norm" established for that particular location, someone from the regional office investigates. Depending upon the particular circumstances, the regional office may direct local supervisors to reduce overtime, hire employees, or take some other appropriate action. The regional office may itself arrange to transfer excess employees permanently to other regional facilities in need of additional personnel.

All of the Employer's courier-guards wear identical uniforms, drive the same type of vehicle, perform the same work duties, are subject to the same work rules, and receive the same benefits. Wage scales, increases, vacation benefits,<sup>14</sup> and the number of holidays and the days on which they are celebrated are all determined on a regional basis. Payroll is handled by the national headquarters.

The regional office also plays an important role in hiring, firing, and transferring employees. It instructs all area operational offices and satellite facilities regarding the format and language to be used in advertisements for new hires. It sets the number of new employees to be hired, and must approve them before they can be considered permanent. Although in some circumstances a local supervisor may fire an employee without prior approval, normally the regional office must approve terminations, as well as new hires and rehires. Transfers also require the regional office's prior approval, except in the case of a short term transfer on an emergency basis. While the record is vague with respect to the actual frequency with which courier-guards transfer between the various regional terminal facilities, if union witness Foshee is an accurate barometer, such transfers would seem to be fairly commonplace. Foshee testified that he transferred at least three times, and added that courier-guards can move around so long as they stay within the jurisdiction of the south-central region.

In view of the factors discussed above, we conclude, as the Board did in *American Courier*, that a bargaining unit limited to a single terminal within one of the Employer's administrative regions is inappropriate. In particular, the high degree to which the Employer's operations are integrated as a result of its customers' demands for time-sensitive and secure delivery, the overlapping supervision under which the courier-guards routinely work, the

<sup>11</sup> The Employer's route structure also consists of express or line-haul routes which involve about 15 percent of the courier-guards in the region. Courier-guards assigned to these routes carry commodities nonstop from their home terminals to other terminals in the region. The remainder of its routes are direct service routes. Courier-guards on these routes make pickups from customers in certain parts of the region and travel nonstop to other parts of the region to deliver the commodities.

<sup>12</sup> Courier-guard Foshee acknowledged knowing, on a personal basis, some of the employees who lay over in the Memphis terminal. He also admitted knowing personally most of the employees stationed at the Jackson, Tennessee, terminal where he laid over on a previous route, and which is a stop on his current route. In addition, Foshee testified that he works with a courier-guard from the Jackson terminal who manifests commodities as he unloads them. Thus, the Petitioner's allegation in its request for review of the Regional Director's decision that "contact between drivers working at different terminals is almost non-existent" stands in direct contrast to the record evidence.

<sup>13</sup> *American Courier Corp.*, *supra*.

<sup>14</sup> Vacation schedules are arranged at the local level, but are reviewed to insure that too many are not being taken at the same time.

frequent contact among courier-guards stationed throughout the region, the uniformity of courier-guards' working conditions and duties, and the broad authority over daily operations and labor relations exercised by the regional office lead us to conclude, in accord with *American Courier*, that only a unit coextensive with the south-central region is appropriate.

Since we have found that the unit sought by the Petitioner is inappropriate, we shall dismiss the petition on this ground, as well as on the ground, discussed *supra*, that the courier-guards are guards under Section 9(b)(3) of the Act, and the Petitioner cannot therefore be certified to represent them.

#### ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.